

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 12, 2003

IN RE:

PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS

DOCKET NO.
03-00118

ORDER GRANTING IN PART MOTION FOR LEAVE TO PROPOUND ADDITIONAL
INTERROGATORIES ON INTERVENOR CONSUMER ADVOCATE AND
PROTECTION DIVISION OF THE OFFICE OF ATTORNEY GENERAL AND
AMENDING PROCEDURAL SCHEDULE

This docket came before the Hearing Officer for consideration of *Tennessee American Water Company's Motion for Leave to Propound Additional Interrogatories on Intervenor Consumer Advocate and Protection Division of the Office of Attorney General* filed on June 6, 2003 and the *Response and Objections of the Consumer Advocate and Protection Division of the Office of the Attorney General to Tennessee American Water Company's Motion for Leave to Propound Additional Interrogatories* filed on June 10, 2003.

In its motion, Tennessee American Water Company ("TAWC") seeks to propound thirty-five (35) additional discovery requests on the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD") and to have the CAPD respond to those requests by Friday, June 13, 2003. TAWC asserts that it provided copies of the requests to the CAPD on June 5, 2003. TAWC contends the interrogatories are a necessary response to the pre-filed direct

testimony of Steve N. Brown and are not burdensome or duplicitous. Also, TAWC contends that it is only fair that it be permitted to propound these requests on the CAPD as this is the only opportunity TAWC has had to serve interrogatories in response to the CAPD's testimony. Lastly, TAWC contends that the CAPD should be required to respond by June 13, 2003 in order to ensure that TAWC has sufficient time to use the responses in the preparation of its rebuttal testimony.

The CAPD responds by attacking the request to propound additional discovery as well as the substance of the interrogatories. The CAPD argues that discovery is closed, responding to the requests imposes an additional burden on the CAPD, propounding the requests at this point in the procedural schedule is highly unusual, and the procedural schedule hampers the CAPD's ability to respond to the interrogatories and simultaneously draft rebuttal testimony. Additionally, the CAPD contends that some of the requests, including numbers 6, 15, and 31, are burdensome and that the information sought as a whole is unreasonably cumulative, duplicative, obtainable from other sources, and unduly burdensome. Despite its objections, the CAPD states that it is willing to respond to requests numbers 1 and 2 and engage in discussions with TAWC.¹

There are many facets of these circumstances that must be considered in determining whether to grant or deny TAWC's motion. For instance, while the Intervenor had the advantage of reviewing TAWC's direct testimony prior to issuing discovery requests, TAWC did not have the same opportunity to review Intervenor's direct testimony. Nevertheless, TAWC was present during the status conference convened to set the procedural schedule. TAWC neither mentioned

¹ Early in its motion, the CAPD states: "the CAPD will provide answers to the additional discovery requests that are easily done and reasonable." *Response and Objections of the Consumer Advocate and Protection Division of the Office of the Attorney General to Tennessee American Water Company's Motion for Leave to Propound Additional Interrogatories*, p. 2 (Jun. 10, 2003). Although the CAPD does not specifically state which of the requests it deems "easily done and reasonable," it later explicitly agrees to respond to requests numbers 1 and 2. *Id.* at 3-4. Therefore, it is reasonable to conclude that only requests numbers 1 and 2 are "easily done and reasonable."

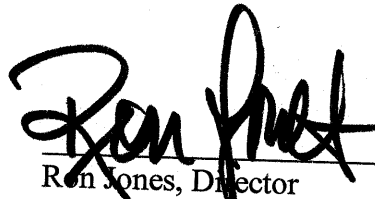
at the status conference the issue of propounding discovery after Intervenor's filed their direct testimony nor sought reconsideration of the schedule as finally set forth in the *Order on March 12, 2003 Status Conference*. Additionally, it is understandable that TAWC's motion came as a surprise to the CAPD given that the procedural schedule did not contemplate a third round of discovery. Likewise, if the motion is granted under the current procedural schedule, the CAPD is required to take on two tasks, responding to discovery and preparing rebuttal, when it contemplated only one. Despite the CAPD's predicament, the Hearing Officer finds that the requests are narrowly tailored to specific testimony and the information sought is discoverable under the Tennessee Rules of Civil Procedure.² Moreover, the information sought will benefit the overall effort of this agency to set rates that are just and reasonable and thereby benefit consumers of all classifications by ensuring that TAWC through the receipt of this information has a fair opportunity to present its rebuttal case.

Having considered the above and attempted to balance all concerns, the Hearing Officer finds that TAWC's motion should be granted in part. In order to avoid duplication and alleviate the burden on the CAPD, the CAPD need only reference any previous discovery responses when such responses would be responsive to the current discovery requests and reference any materials that are public records or readily assessable through the internet. Further, the CAPD shall have until Tuesday, June 17, 2003, 2:00 p.m. to respond. As a result of this decision, the procedural schedule is amended such that pre-filed rebuttal testimony shall be filed on Monday, June 23, 2003, 2:00 p.m. and served on all parties via hand-delivery or facsimile.

² See Tenn. R. Civ. P. 26.02(4)(A) (2003).

IT IS THEREFORE ORDERED THAT:

- 1) *Tennessee American Water Company's Motion for Leave to Propound Additional Interrogatories on Intervenor Consumer Advocate and Protection Division of the Office of Attorney General* filed on June 6, 2003 is granted in part.
- 2) The Consumer Advocate and Protection Division of the Office of the Attorney General shall respond to the discovery requests by **Tuesday, June 17, 2003, 2:00 p.m.** In preparing its responses the Consumer Advocate and Protection Division of the Office of the Attorney General need only reference any previous discovery responses when such responses would be responsive to the current discovery requests and reference any materials that are public records or readily assessable through the internet.
- 3) Pre-filed rebuttal testimony shall be filed by all parties on **Monday, June 23, 2003, 2:00 p.m.** and served on each party via hand-delivery or facsimile.



Ron Jones, Director
Hearing Officer³

³ See *Order Suspending Increase in Rates for Ninety Days and Appointing a Pre-Hearing Officer*, 2 (Mar. 31, 2003) (appointing Director Jones to "hear preliminary matters prior to the Hearing, to rule on any petition(s) for intervention, and to set a procedural schedule to completion").